MT LEGISLATIVE HISTORY

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Chapter 679 1991

Bill H _____ S 368 Original bill & hist. ✓C

H. Committee on Agriculture Livestock & Irrigation S. Committee on Agriculture Livestock & Irrigation

Hearing Date(s)			Hearing Date(s)		
Mar 19	✓	C	Feb 20	✓	C
		C			C
		C			C
		C			C
Date Out Mar 19	✓	C	Feb 21	✓	C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

2/23	MOTION FAILED TO RECONSIDER ADOPTION OF ADVERSE COMMITTEE REPORT	21	29

SB 366 INTRODUCED BY FRANKLIN, ET AL.

REQUIRE HEALTH INSURANCE COVERAGE FOR MAMMOGRAPHY EXAMINATIONS

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO BUSINESS & INDUSTRY		
2/19	HEARING		
2/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED	48	1
2/22	3RD READING PASSED	39	11
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO HUMAN SERVICES & AGING		
3/19	HEARING		
3/23	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/06	2ND READING CONCURRED	66	28
4/06	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING THIS DAY		
4/06	3RD READING CONCURRED	68	28
	RETURNED TO SENATE WITH AMENDMENTS		
4/17	2ND READING AMENDMENTS CONCURRED	49	0
4/18	3RD READING AMENDMENTS CONCURRED	47	2
4/22	SIGNED BY PRESIDENT		
4/23	SIGNED BY SPEAKER		
4/23	TRANSMITTED TO GOVERNOR		
4/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 663	EFFECTIVE DATE: 10/01/91	

SB 367 INTRODUCED BY CRIPPEN, ET AL.

AUTHORIZE PROPERTY TRANSFER TO YELLOWSTONE ART CENTER FOUNDATION

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO LOCAL GOVERNMENT		
2/19	HEARING		
2/19	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED		
2/21	2ND READING PASSED	49	0
2/22	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO LOCAL GOVERNMENT		
3/13	HEARING		
3/14	COMMITTEE REPORT—BILL CONCURRED		
3/14	PLACED ON CONSENT CALENDAR		
3/16	3RD READING CONCURRED	91	6
	RETURNED TO SENATE		
3/21	SIGNED BY PRESIDENT		
3/22	SIGNED BY SPEAKER		
3/23	TRANSMITTED TO GOVERNOR		
3/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 198	EFFECTIVE DATE: 3/27/91	

SB 368 INTRODUCED BY JERGESON, ET AL.

ESTABLISH ENFORCEMENT PROVISIONS FOR VIOLATIONS OF MONTANA WATER USE LAWS

2/13	INTRODUCED		

2/13	FIRST READING		
2/13	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
2/13	FISCAL NOTE REQUESTED		
2/18	FISCAL NOTE RECEIVED		
2/19	FISCAL NOTE PRINTED		
2/20	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	2ND READING PASSED	48	0
2/26	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
3/19	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/06	2ND READING CONCURRED	86	8
4/06	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING THIS DAY		
4/06	3RD READING CONCURRED	88	8
	RETURNED TO SENATE WITH AMENDMENTS		
4/17	2ND READING AMENDMENTS CONCURRED	49	0
4/18	3RD READING AMENDMENTS CONCURRED	47	2
4/23	SIGNED BY PRESIDENT		
4/23	SIGNED BY SPEAKER		
4/23	TRANSMITTED TO GOVERNOR		
4/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 677	EFFECTIVE DATE: 4/27/91	

SB 369 INTRODUCED BY JACOBSON, ET AL.

PROHIBIT SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/13	FISCAL NOTE REQUESTED		
2/19	FISCAL NOTE RECEIVED		
2/19	FISCAL NOTE PRINTED		
2/20	HEARING		
3/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/15	2ND READING PASSED AS AMENDED	34	14
3/16	3RD READING PASSED	38	11
	TRANSMITTED TO HOUSE		
3/18	FIRST READING		
3/18	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
3/22	HEARING		
3/22	TABLED IN COMMITTEE		

SB 370 INTRODUCED BY WATERMAN, ET AL.

ESTABLISH MONTANA DRUG ABUSE RESISTANCE EDUCATION PROGRAM (D.A.R.E.)

BY REQUEST OF DEPARTMENT OF JUSTICE

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO FINANCE & CLAIMS		
2/19	FISCAL NOTE PRINTED		
2/19	FISCAL NOTE RECEIVED		
3/05	HEARING		
3/07	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/08	2ND READING PASSED	49	0
3/09	3RD READING PASSED	46	2
	TRANSMITTED TO HOUSE		
3/11	FIRST READING		

SENATE BILL NO. 368

INTRODUCED BY JERGESON, BURNETT, SCHYE, STEPPLER, KOEHNKE

IN THE SENATE

FEBRUARY 13, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION.
	FIRST READING.
FEBRUARY 21, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 22, 1991	PRINTING REPORT.
FEBRUARY 23, 1991	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 25, 1991	SECOND READING, DO PASS.
FEBRUARY 26, 1991	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 49; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION.
	FIRST READING.
MARCH 20, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
APRIL 6, 1991	SECOND READING, CONCURRED IN.
	ON MOTION, RULES SUSPENDED. BILL PLACED ON THIRD READING THIS DAY.
	THIRD READING, CONCURRED IN. AYES, 88; NOES, 8.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 17, 1991	RECEIVED FROM HOUSE.
	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 18, 1991	THIRD READING, AMENDMENTS CONCURRED IN.
APRIL 19, 1991	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

LC 0915/01

SENATE BILL NO. 368

INTRODUCED BY Jergeson Burnett Selzer Hawks

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING ENFORCEMENT PROVISIONS FOR VIOLATIONS OF THE MONTANA WATER USE LAWS; AMENDING SECTIONS 85-2-114 AND 85-2-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-114, MCA, is amended to read:

"85-2-114. ~~Prevention--of--waste~~ Judicial enforcement. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, or preventing water from moving to another person having a prior right to use the ~~same~~ water, or violating a provision of this chapter, it may, after reasonable attempts have failed to obtain voluntary compliance as provided in subsection (4), petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use; ~~or~~

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take such steps as may be necessary to remedy the waste, unlawful use, or interference~~;~~ or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) ~~The~~ Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it, which notice shall be legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin such waste, unlawful use, ~~or~~ interference, or violation.

(4) The department must attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court

INTRODUCED BILL
SB 368

under subsection (1). The attempts to obtain voluntary compliance under this subsection may not exceed 3 working days."

Section 2. Section 85-2-122, MCA, is amended to read:

"**85-2-122. Penalties.** (1) A person who violates or refuses or neglects to comply with the provisions of this chapter, any order of the department, or any rule of the board is guilty of a misdemeanor.

(2) A person who violates or refuses or neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the board is subject to a civil penalty not to exceed $1,000 per violation. Each day of violation constitutes a separate violation."

NEW SECTION. **Section 3.** **Effective date.** [This act] is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for SB0368, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill establishes enforcement provisions for violations of the Montana water use laws.

ASSUMPTIONS:

The DNRC receives approximately 100 water rights-related complaints each year. Many of these complaints are repeated from previous weeks or previous years. The DNRC typically field-investigates written complaints that are received. The DNRC attempts to negotiate among the affected water users to resolve the alleged wrongdoing. The recent drought conditions increase the number and exacerbate the severity of the complaints. The DNRC assumes that when alleged violations go uncorrected, repeated complaints will frequently continue. The DNRC assumes that no additional staff commitment will be needed to respond to complaints. A grade 15 compliance specialist will be hired to enforce compliance. The compliance position will be formed from a current level position because less commitment will be needed to respond to a reduced number of complaints after compliance is demonstrated.

1. 100 water right complaints will be received by the DNRC each year.
2. 10% of the field investigations will, in the future, require district court action with DNRC participation.
3. District court action, including preparing recommendations, issuing an injunction, and preparing litigation strategy will cost the DNRC $500 per case.

FISCAL IMPACT:
Department of Natural Resources and Conservation:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Expenditures:						
Operating Costs	0	2,500	2,500	0	2,500	2,500
Funding:						
General Fund	0	2,500	2,500	0	2,500	2,500
Impact to General Fund			(2,500)			(2,500)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

If fines are levied and collected from violators, the county where the violation occurs may receive such fines as revenue.

2-18-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2/19/91
GREG JERGESON, PRIMARY SPONSOR DATE

Senator Beck asked what was the need for Section 2, (2). Mr. Maxwell informed that it is a clarification of constitutional law.

Senator Devlin asked if the lease terminates during the time the bank has it, would they have the preference to meet the bid. Mr. Maxwell advised that the lessee would still have the preference because he still has the use of the lease.

Senator Aklestad asked how improvements would be handled at the time of a foreclosure, and would the original lessee be compensated for improvements. Mr. Maxwell stated that the lenders acquire whatever interest the lessee had, including his interest in improvements. He added that is really a problem between the lender and the debtor more so than the Department.

John North, Department of State Lands, advised that would be a contractual matter between the bank and the lessee, and it should be stipulated at the time they sign the lease. If the lease happens to be canceled or expires, then there is an arbitration procedure.

Closing by Sponsor:

Senator Mazurek stated that he believed the committee members had scrutinized the bill pretty thoroughly. He reiterated that it is not intended to change substantively what goes on between the debtors and creditors, but rather it is to eliminate the need for the Department to participate in lawsuits where it actually should not be a defendant. He asked for the committee's favorable consideration of SB 409.

HEARING ON SENATE BILL 368

Chairman Jergeson turned the Chair over to Vice-Chairman Koehnke.

Presentation and Opening Statement by Sponsor:

SENATOR GREG JERGESON, District 8, chief sponsor of SB 368, advised that the Water Resources Association and one of the Board members, an irrigated farmer in his county, approached him to see if he would be interested in sponsoring this bill. The primary purpose of the bill is to provide for timely resolution of conflicts over the use of water. The Department would investigate rapidly and seek, if necessary, the proper temporary or permanent injunction to resolve the problem. He stated he would also offer amendments to provide for disposition of fines that are contained in Section 2 (2).

Proponents' Testimony:

Jo Brunner, Executive Secretary, Montana Water Resources Association, advised that it has been a lengthy and tiring

process to get this piece of legislation to the point where MWRA believes it will be able to accomplish their purpose - a timely and fair solution to misuse of water rights. She urged the committee to give it careful consideration, and presented and read her written testimony (Exhibit #4).

MAX MADDOX, Chinook Irrigation District and a member of the Board of Directors, Montana Water Resources Association, was not present at the hearing but requested Ms. Brunner to submit his written testimony to the committee in support of SB 368 (Exhibit #5).

DON MacINTYRE, Attorney, Montana Department of Natural Resources, advised that this bill is the result of a request of the Department of Natural Resources but they have worked with people who are interested in this bill and agree with it. He stated that the Department is not interested in being any kind of a police force to "take on" irrigators. They find the general problem is that in the case where they have issued permit, the affected water user complains because of that operation. The Department now has the authority to revoke that permit, but to go through that process takes some time and does not give the existing water user the relief they are seeking. This bill would allow the Department of Natural Resources to go into court and get a temporary restraining order against that particular permit holder and prevent use of the water during that irrigation season. They receive 10 to 12 complaints per year in each of nine field offices. Out of those 100 complaints they would expect to be involved in court action approximately five times. He stated they will not be hiring a person that is not a FTE at the present time. It will be a question of prioritizing programs and using existing personnel. He presented written testimony from the Department of Natural Resources and Conservation (Exhibit #6).

STAN BRADSHAW, Montana Trout Unlimited, stated he is in support of SB 368. He believes that good water management has benefits for everybody. It is his opinion the civil penalty has some value because it provides an incentive for the recalcitrant who would use water until someone stops him. With this provision they are on notice that if they take that path, it will cost them.

GARY SPATH, Montana Coalition of Water Users, a coalition of water users in the Bitterroot, Dillon-Beaverhead, Madison County area, Deer Lodge area, and Big Timber-Sweetgrass County area, stated that on behalf of that coalition he would like to record support for SB 368. He believes it clarifies the Department's responsibility and authority; gives the water user another tool in the event there is a violation of water rights, and is a good piece of legislation.

TED DONEY, attorney in private practice in Helena, specializing in water law, advised he is representing only himself because of his great interest. He stated he testifies frequently on water law bills. In his opinion, the "guts" of this bill is on page 2, line 8, in the word "must". It is up to the court to grant the injunctions and the TRO. The Department will have a tool it does not have now to enforce violations of the water laws, and much more rapidly.

KAY NORENBERG, Wives Involved in Farm Economics, advised that she is a dry land farmer and does not know much about irrigation, but her group would like to go on record in support of SB 368.

LORRAINE GILLIES, Montana Farm Bureau, presented written testimony in support of SB 368 (Exhibit #7).

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Swift asked if the number of ditch riders and commissioners would have to be increased. Mr. Doney said that on adjudicated streams like in Senator Swift's area, he does not anticipate this being used very often. Mr. Doney stated this bill is for non-decreed streams.

Senator Aklestad asked what would be the time frame - three days as far as the voluntary compliance, then how long does it take to get a TRO. Mr. MacIntyre replied that a temporary restraining order can be issued by the court the same day that it was requested. Senator Aklestad also asked what point in time does the $1,000 fine take place. Mr. MacIntyre stated it would be made at the time the court determines there is a violation.

Closing by Sponsor:

Senator Jergeson stated that anything they do with water law is bound to affect somebody one way or the other, but he is in favor of those who have the strongest legal right to the use of water. It is his contention that if the water law means anything, and if having a senior right means anything, then a way must be found to expeditiously enforce the law in a timely manner. He stated that is what SB 368 is all about, and he urged adoption by this committee.

* * * * *

Senator Jergeson resumed Chairmanship of the committee.

Senator Jergeson requested Doug Sternberg, Legal Counsel, to explain the amendment. Mr. Sternberg stated the intent of the amendment is to make it clear that fines collected under Section 2 would flow into the Department's account rather than to the general fund of the county where the Court presides, which is the case under current law.

Senator Williams wondered if the district courts would be upset about this action since they are hurting for funds.

Senator Jergeson said there is a question of how often this procedure would ultimately be used, and it most probably would act, to a degree, as an incentive for people to make sure they are not using water illegally.

EXECUTIVE ACTION ON SENATE BILL 368

Amendments, Discussion, and Votes:

Senator Swift made a motion that the amendments for SB 368 be adopted. Those in favor - 9; opposed - 0. MOTION CARRIED.

Recommendation and Vote:

Senator Aklestad made a motion that SB 368 DO PASS AS AMENDED. Those in favor - 9; opposed - 0. MOTION CARRIED.

EXECUTIVE ACTION ON SENATE BILL 409

Amendments, Discussion, and Votes:

Senator Devlin made a motion that the amendments for SB 409 be adopted. Those in favor - 9; opposed - 0. MOTION CARRIED.

Recommendation and Vote:

Senator Devlin made a motion that SB 409 DO PASS AS AMENDED. Those in favor - 9; opposed - 0. MOTION CARRIED.

EXECUTIVE ACTION ON SENATE JOINT RESOLUTION 22

Recommendation and Vote:

Senator Koehnke made a motion that SJR DO PASS. Those in favor - 9; opposed - 0. MOTION CARRIED.

ROLL CALL

AGRICULTURE COMMITTEE

DATE 2/20/91

52nd LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SEN. JERGESON	X		
SEN. KOEHNKE	X		
SEN. AKLESTAD	X		
SEN. BECK	X		
SEN. BRUSKI	X		
SEN. DEVLIN	X		
SEN. REA	X		
SEN. SWIFT	X		
SEN. WILLIAMS	X		

Each day attach to minutes.

MONTANA WATER RESOURCES ASSOCIATION

501 N. Sanders • Helena, Montana 59601 • (406) 442-9666

SENATE AGRICULTURE
EXHIBIT NO. #4
DATE 2/20/91
BILL NO. SB 368

Senate Agriculture Committee February 20, 1991

SB368 Senator Jergeson Support

Jo Brunner, Executive Secretary, Montana Water Resources Association.

It has been a lengthy and tiring process to get this piece of legislation to the point where MWRA believes we will be able to accomplish our purpose, a timely and fair solution to misuse of water rights. I hope that you will give it careful consideration.

While this bill has taken on the nickname of our 'enforcement' bill, we hope that it will actually prove to be a law that those who use water either illegally, or negligently or wastefully will come to recognize as a means to rectify those situations as quickly and beneficially to all as possible.

It was never the intent of our people to randomly and without just cause have thier neighbors water shut off. Or to have a fisherman walking down the stream decide that too much water is being diverted, or wasted and have an irrigators water turned off during his irrigation season.

While we have high hopes of such not happening, if it weren't for the intensive grilling I put several of the DNRC people through concerning the rules and regulations now in existence, the means they use for investigations of complaints, the problems they have with the present situations, we might not have gone forward with this bill, even though there usually is a great need for urgency in the problem we are addressing in the bill.

The SB368 amendments to 85-2-114 would allow the department, upon complaint, to accomplish an investigation, in compliance with the rules and methods in existence now, and upon determining that there could be a violation of water use, contact the person in question, and make reasonable attempts to obtain voluntary compliance. Should such efforts be unsuccessful, request the district court to issue a temporary, preliminary or permanent injunction to prevent the continuation of the violation.

It was not our intent to tie the departments hands by mandating perimeters for discussions as to the voluntary compliance. If it is a broken headgate, a measuring device not operating correctly, a plugged up culvert, they ought to be able to give the respondent a reasonable time to get his problems straightened out. If the investigation has determined with reasonable cause, that the respondent is diverting more water than he has a right to divert, or that he is wantonly wasting water, the effort must still be made to work it out and allow

compliance.

Given the time frame for investigation of the complaint, the 3 working days for discussion, we are already looking at close to a week. If the 3 working days envelop a week end, and the respondent has indeed been using water not his rightfully, we're more than crowding if not loss of crop, at the very least a stressed crop, for the irrigator who is not getting his rightful share of the water.

We have tried very hard to be fair with all parties, discussing this with several legislators, with irrigators, and other interested water users. We feel that we have leaned over backwards to be fairer than is necessary to make sure that irrigation will not be stopped unjustly.

However, you need to remember that the people who are requesting this bill are irrigators. They know what its like to see a neighbor actually take water that is not his, shorting another, and not being able to do anything about it under our present system--long after his crop has been harmed.

They have, in instances, witnessed a farmer, without a water right, irrigate all season, season after season, because it takes so long to get anything accomplished legally, and once the season is over, so is the problem.

Our intent is to speed up the process and afford the rightful owners, or those who do conserve water, who do take care of their diversions and measuring devices, the means to use his water as he should be able to.

We discussed quite extensively the need for the $1,000.00 per day fine. If you think it excessive, remember that if a person is using another irrigators water, by what ever manner, he can afford to pay a lesser fine, say $250.00 a day for several days, continue to irrigate until he's over the field, pay that lesser fine and have a crop of greater worth. Consider the cost to the rightful owner of the water. Even four additional days without the necessary water can cost him many thousands of dollars.

We do support the amendment for the allocation of the fines to the department to accomplish the necessary work. It has been suggested that to have such an account would encourage the Department to go out and harass the irrigators and perhaps even nit pick the users. To the contrary, we think that if one or two $1,000.00 per day fines are assessed, there won't be very many mis-users unwilling to discuss the situation and do something about it.

It is our hope that having this change of law in place will indeed discourage intentional misuse of water rights.

Thank you.

SENATE AGRICULTURE
EXHIBIT NO. #5
DATE 2/20/91
BILL NO. SB 368

Senate Agriculture Committee February 20, 1991

SB368 Senator Jergeson Support

Testimony from: Max Maddox, Chinook, Montana, Chinook Irrigation District. Board of Directors, Montana Water Resources Association.

The need for an enforcement provision enabling the Department of Natural Resources to act in a timely fashion has been determined.

The key word is timely. The present process takes too long. In irrigated agriculture plant populations are high, therefore creating the need for adequate water on a timely basis. Late water placement can devastate a crop in days, not weeks.

If this process cannot be speeded up to protect the irrigators crop then perhaps this legislation is in vain.

I urge you to support this bill and our intent for quick resolution in regard to water disputes.

Thank you to the committee members and a special thanks to Senator Jergeson for carrying this bill for us.

Max Maddox

SENATE AGRICULTURE
EXHIBIT NO. #6
DATE 2/20/91
BILL NO. SB 368

SENATE BILL 368

TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

February 19, 1991

- -

A Bill for an act entitled:

"An Act establishing enforcement provisions for violations of the Montana Water Use Act; amending sections 85-2-114 and 85-2-122, MCA; and providing an immediate effective date.

- -

Purpose

The purpose of this bill is to clarify the Department's responsibility and strengthen its ability to enforce water rights violations that adversely affect other water users. It's anticipated that the implementation of the bill will help reduce the escalating number of alleged violations, and thereby decrease the amount of staff time required to resolve such complaints.

Background

The Department has been receiving a significant and increasing number of water rights complaints each year. Many of these complaints are valid and represent meaningful injury to water users. Drought conditions exacerbate the severity of the complaints.

The use of water is more often a function of the location of water users on the stream and/or the aggressiveness of the water users, rather than a process of observing priority dates and/or beneficial uses. On some streams, the lack of water right enforcement leads to cooperation and shortage sharing; on other streams chaos and massive water chicanery result.

The Department is often contacted by water users who allege that they are being injured by other water users. The complaining parties expect the Department to enforce the water use laws and correct the alleged wrongdoing. However, the Department does not have the authority to administratively require a water right user to change or stop their illegal appropriation -- even though the Department frequently understands what is needed to correct the situation and is usually aware of the facts surrounding an alleged violation. The Department attempts to resolve complaints primarily through discussions with the involved parties. The Department rarely becomes involved in litigation to resolve complaints, because the Department cannot prove any irreparable harm to the department that would allow the court to issue a temporary injunction.

Water users would be more effectively served if the Department

convincingly demonstrated an ability to enforce and correct blatant violations. A strong enforcement program by the Department would serve as a deterrent to many water right violators, thereby reducing the number of complaints from injured parties.

Implementation

Under current law, the Department may petition the district court for relief in limited situations. If this bill is enacted the Department will be able to petition the district court for relief for any violation of the water rights laws set out in Chapter 2 of Title 85. Judicial enforcement will only occur after reasonable attempts have been made to obtain voluntary compliance. Voluntary compliance will be attempted through warning, conferences, negotiation or other reasonable discussion means.

The Department will be able to ask the district court to issue a temporary restraining order to immediately stop any violation that may be causing harm or injury. The Department may also ask the district court to issue preliminary restraining orders and permanent injunctions for violations of the water rights laws administered by the Department.

In addition the existing maximum possible penalties for violators will increase from $500 to $1,000 fine per violation, per day.

Fiscal Impact

The time and effort spent in responding to complaints will be reduced when complaints are resolved through administrative enforcement of the water right statutes. In this respect, staff resources used to investigate complaints, collect data and information, and appease disputing parties will be better directed to resolving issues through enforcement procedures. Some minimal costs to prepare and file legal documents may be incurred. Therefore, the fiscal impact is expected to be minimal.

However, if the Department is required to bring judicial action after trying to obtain voluntary compliance, fiscal impacts would be generated. The bill should be amended to eliminate this requirement.

SENATE AGRICULTURE
EXHIBIT NO. #7
DATE 2/20/91
LL NO. SB 368

MONTANA FARM BUREAU FEDERATION
502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

BILL # SJR 22 ; TESTIMONY BY: Lorraine Gillies

DATE 2/20/91 ; SUPPORT Support ; OPPOSE _____

Mr. Chairman, members of the Committee:

For the record, I am Lorraine Gillies, representing Montana Farm Bureau.

We support the precept of using renewable resources that are a product of the State of Montana to replace other, non-renewable, imported products and resources.

We urge a do-pass recommendation for HJR 22

Thank you.

SIGNED: Lorraine Gillies

SB 360
SB 409
SB
SJR 22

DATE 2/20/91

COMMITTEE ON Agriculture

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppos
John North	Dept of State Land	SB407	✓	
Lon Maxwell	DSL	SB 409	✓	
Lorraine Gillies	MT Farm Bureau	SJR 22	✓	
Lorraine Gillies	MT Farm Bureau	SB 368	✓	
Al Kurki	AERO	SJR 22	✓	
Bob Stephens	Mt. Grain Growers Assn	SJR 22	✓	
Bob Stephens	" " " "	SB 409	✓	
Kay Wanberg	WIFE	SJR 22	✓	
Steve [illegible]	#20 Senate	SJR 22	✓	
Charles Yaeger	NPRC	SJR 22		
Kay Wanberg	WIFE	SB 368 SB 409	✓	
Don McDonald	DNRC	SB 368	✓	
Don Stickan	Alcotech	SJR 22	✓	
Joe Brenna	MCWA	SB 368	✓	
Ted J. Doney	Self → Mont. Dairymen's Assn. →	SB 368 SJR 22	✓	
Steve Brockbank	MTU	SB 368	✓	
Gary Spaeth	MT. Water Users Coalition	SB 368	X	

ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date: 2/20/91 Bill No: SB 368 Time:

NAME	YES	NO
SEN. AKLESTAD	X	
SEN. BECK		
SEN. BRUSKI	X	
SEN. DEVLIN	X	
SEN. REA	X	
SEN. SWIFT	X	
SEN. WILLIAMS	X	
SEN. KOEHNKE	X	
SEN. JERGESON	X	

D. QUINN
Secretary

GREG JERGESON
Chairman

Amendment;

Motion: Senator Swift made a motion that the amendments be adopted. In favor - 8; Opposed - 0. MOTION CARRIED

ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date: 2/20/91 Bill No: SB 368 Time: 4:58

NAME	YES	NO
SEN. AKLESTAD	X	
SEN. BECK	X	
SEN. BRUSKI	X	
SEN. DEVLIN	X	
SEN. REA	X	
SEN. SWIFT	X	
SEN. WILLIAMS	X	
SEN. KOEHNKE	X	
SEN. JERGESON	X	

D. QUINN
Secretary

GREG JERGESON
Chairman

Motion: Senator Aklestad made a motion that SB 368 DO PASS AS AMENDED. In favor - 8; Opposed - 0. Motion CARRIED.

SENATE STANDING COMMITTEE REPORT

February 21, 1991

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration Senate Bill No. 368 (first reading copy -- white), respectfully report that Senate Bill No. 368 be amended and as so amended do pass:

1. Title, line 6.
Following: "LAWS;"
Insert: "PROVIDING FOR DISPOSITION OF PENALTIES;"
Following: "85-2-114"
Strike: "AND"
Insert: ","
Following: "85-2-122,"
Insert: "AND 85-2-123,"

2. Page 3, line 14.
Following: line 13
Insert: "(3) Fines collected by a district court under subsection (2) must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114.

Section 3. Section 85-2-123, MCA, is amended to read:
"85-2-123. Deposit of fees and penalties. Except as provided in 85-2-124 and 85-2-241, all fees and penalties collected under this chapter shall be deposited in the water right appropriation account established in 85-2-318. All Except for fines collected by a district court under 85-2-122, all penalties or fines imposed by any court other than a justice's court for a violation of this chapter shall be deposited in the general fund of the county where the court presides and shall be disposed of in the same manner as any other penalty or fine.""
Renumber: subsequent section

Signed: Greg Jergeson
Greg Jergeson, Chairman

Amd. Coord.

2-21-91
Sec. of Senate

shortly after it was delivered. They didn't have a warehouse receipt, which means they couldn't change their minds or take it back. They couldn't place it under government loans because it wasn't there. When the banks demanded money from this grain, the farmers usually had to sell it to the grain company at a lower cost. He said farmers deserve more protection for their products. He urged the committee to give SB 19 serious consideration.

Randy Johnson, Montana Grain Growers Association, said he is pleased with the persistence that **SEN. JERGESON** has brought some sort of resolve to this problem. He supports SB 19 as amended. It gives the grain companies enough latitude as an industry. It provides a warning that will be meaningful to producers, but not harm anyone in the industry. He said they would be willing to work toward this proposal if the bill passes.

Kay Norenberg, WIFE, said these contracts are risky business and requested that the amendments be adopted.

Opponents' Testimony:

Tom Reitter, Harvest States Cooperatives, said they are not vehemently opposed. He said this bill is in the best interest of the producers with Montana in mind. He said NPE is not mandated. Each producer can make his own decision. Relative to market price effects, Montana raises 150 million bushels of wheat a year, approximately 5% of the national production. They view the amendments as more of an administrative inconvenience for Harvest States. They have 119 producers in 19 states they represent and do business with. He said **SEN. JERGESON'S** intentions are admirable in this effort, but mildly opposed.

Questions From Committee Members: None

Closing by Sponsor:

SEN. JERGESON said the statement of risk should apply to all grain companies. There are considerable financial risks involved with most financial institutions. In signing these contracts, there is a great risk. Producers involve themselves with a lot of money and a financial risk that needs to be admitted. He urged the committee to adopt the amendments and concur in SB 19.

HEARING ON SB 368

Presentation and Opening Statement by Sponsor:

SEN. GREG JERGESON, Senate District 8, Chinook, distributed amendments. **EXHIBIT 3** This bill was requested by a local irrigator in Blaine County, who is a member of the Montana Water Resources Association. This bill attempts to speed up the resolution of water use conflicts between users on particular streams. During the summer when an irrigator is entitled to

water and it should be available, but someone up the line has overused their water rights, that person isn't receiving his water when he needs it and can suffer substantial financial loss. This will speed up the process of those conflicts in a timely manner so those entitled to the water can receive it. When the Department of Natural Resources and Conservation (DNRC) receives a complaint about someone wasting water or using water they are not entitled to, or preventing the water from moving to an area where another person has a right, DNRC shall investigate and try to get voluntary agreement and resolution of the conflict within the 3 day period. If they fail in the 3 day time period, the department can go to the district judge and receive a temporary restraining order.

Proponents' Testimony:

Jo Brunner, Montana Water Resources Association, said in past years, the association has been very frustrated with the slowness of any process to stop illegal use of water during the irrigation season. This bill has been given the name of the "enforcement bill"; they hope it will become law so it will induce those who use water illegally to recognize it as a means to rectify as quickly and beneficially as possible. She spent a great deal of time with DNRC learning about the rules and regulations they now utilize in reviewing and investigating complaints. With the problems they have with the present system and the benefits, the association is satisfied that this bill, combined with existing means for enforcement, will benefit the water users by implementing the enforcement in a shorter time frame. This will allow DNRC to contact the person in question and make attempts at voluntary compliance. If unsuccessful, DNRC requests the district court to issue a temporary preliminary or permanent injunction to prevent continuation of that violation. **EXHIBIT 4**

Don MacIntyre, Chief Legal Council, DNRC, said the amendment allows the district court to place the fines they collect in the appropriate account for purposes of enforcing the law under this section. It also allows fines collected by DNRC to go into that fund. Normally, the agency levies the fine against the violator who would either negotiate, voluntarily pay the fine or go to district court to enforce it. The law as it exists, the money collected only by the district court goes into this fund. This bill allows for any money collected to go into the fund. He said this is a good bill and gives the state a valuable tool. He gave an historical synopsis of the department on violations. When the department received a violation and needed to go out and investigate, they did not have the power to go into district court to get a temporary injunction. They had to inform the water user that is effected it is their responsibility to go into district court to get the restraining order; DNRC accompanies them, but the person harmed has to take the lead. If this bill is passed, it will give DNRC the ability to take the lead. They will not go into a civil action suit in a local community on their own. They invite the person being harmed to be a party to

that action.

Stan Bradshaw, Montana Trout Unlimited, said that Trout Unlimited has become increasingly involved with this issue. When someone is violating the water laws, it has ramifications well beyond the diversion where the violator is taking extra water for off-stream use. The violation affects in-stream users, which Trout Unlimited have interest in. This bill offers a orderly process to deal with those problems. The invocation of civil penalties are a good incentive for the violator to not continue the violation. He urged the committee to support SB 368.

Carol Mosher, Montana CattleWomen, said the association is in support of SB 368.

Kay Norenberg, WIFE, said this is a good bill and would like go on record in support of SB 368.

Opponents' Testimony: None

Questions From Committee Members:

REP. BACHINI asked **SEN. JERGESON** about the penalty section of the bill where it states that the penalty shall not exceed $1,000 per violation, does each day of the violation constitute a separate violation. **SEN. JERGESON** said that each day the violation occurs is a separate violation where the maximum penalty is applied. If the temporary injunction was given on the fourth day it will mean they are capping the amount of money that comes in on the violation to $3,000. **Mr. MacIntyre** was asked to answer this question. He said the language that is used is standard language used in a lot of civil violation penalties. It basically states if there is a violator taking water from a source of supply they are not entitled to and the action is injuring a water user, that is a violation of law and is subject to a $1,000 a day penalty. If it happens the next day, the violator is subject to the same penalty. If the violator continues after the temporary injunction has been served, than the court will treat him from a different vantage point. Each day is a separate violation for the 3 days. The penalties are cumulative.

Closing by Sponsor:

SEN. JERGESON thanked the committee for a good hearing. This bill speeds up the resolution process so the people that are entitled to their water can get it when it is needed.

EXECUTIVE ACTION ON SB 368

Motion: **REP. BACHINI MOVED SB 368 BE CONCURRED.**

Discussion: **REP. BACHINI** moved to adopt the amendments. Question was called. Motion **CARRIED** unanimously.

REP. BACHINI said he had a problem with the $1,000 per day penalty. He thought it was too high. If a person did this unknowingly, they could pick up quit a penalty.

Mr. Sternberg explained the amendments. It is a system of voluntary compliance whereby the department attempts to obtain voluntary compliance for 3 days. There are 3 days that the violator can rectify the situation. That is the 3 working days and the $3,000 fine. Each of the 3 working days constitute a $1,000 violation. After the 3-day period, the provisions of subsection (1) (c) would start, with the department going to district court with evidence of violation and evidence of the attempt to get voluntary compliance. If convinced, the court then grants a temporary restraining order. There is a cap implied in the 3 working days. If the violator doesn't comply, than this section gives the department the authority to go to court and speed up the process.

REP. BARNETT rose in support of the bill and amendments.

REP. MCCAFFREE said he is in support of the fine. He knows people that would gladly pay the $1,000 fine.

Motion/Vote: REP. BACHINI MADE A SUBSTITUTE MOTION THAT SB 368 BE CONCURRED IN AS AMENDED. Question was called. Voice vote was taken.

Vote: SB 368 BE CONCURRED IN AS AMENDED. Motion CARRIED unanimously. REP. SCHYE will carry SB 368 on the House floor.

EXECUTIVE ACTION ON SB 19

Motion: REP. BACHINI MOVED SB 19 BE CONCURRED.

Discussion: REP. BACHINI moved to adopt amendments. Question was called. Voice vote was taken.

Motion/Vote: REP. BACHINI MADE A SUBSTITUTE MOTION THAT SB 19 BE CONCURRED IN AS AMENDED. Question was called. Voice vote was taken.

Vote: SB 19 BE CONCURRED IN AS AMENDED. Motion CARRIED 15 to 1 with REP. DEBRUYCKER (Roger) voting no. CHAIR LINDA NELSON will carry SB 19 on the House floor.

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE

ROLL CALL DATE 3-19-91

NAME	PRESENT	ABSENT	EXCUSED
REP. DON STEPPLER, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. JOE BARNETT	✓		
REP. GARY BECK	✓		
REP. JANE DEBRUYCKER	✓		
REP. ROGER DEBRUYCKER	✓		
REP. JIM ELLIOTT	✓		
REP. MARIAN HANSON	✓		
REP. HARRIET HAYNE	✓		
REP. VERNON KELLER	✓		
REP. DON LARSON	✓		
REP. JIM MADISON	✓		
REP. ED MCCAFFREE	✓		
REP. JOHN PHILLIPS	✓		
REP. JOHN SCOTT	✓		
REP. LINDA NELSON, CHAIR	✓		

CS05COM.man

EXHIBIT 2
DATE 3-19-91
HB SB 368

Amendments to Senate Bill No. 368
Third Reading Copy

Requested by Sen. Jergeson
For the Committee on Agriculture

Prepared by Doug Sternberg
March 19, 1991

1. Page 3, line 16.
Following: "BY"
Insert: "the department or"

MONTANA WATER RESOURCES ASSOCIATION

501 N. Sanders • Helena, Montana 59601 • (406) 442-9666

EXHIBIT 4
DATE 3-19-91
HB SB 368

SB368 JERGESON MARCH 19, 1991

Jo Brunner, Executive Secretary, Montana Water Resources Association

The Montana Water Resources Association has given this legislation a great deal of consideration over the years. Our people have been frustrated with the slowness of any process to stop illegal uses of water, specifically during the irrigation seasons when getting the water to the crops is of vital importance.

While this bill has been given the nickname of the 'enforcement bill' we hope it will actually prove to be a law that will induce those who use water illegally, or negligently or wastefully, to recognize it as a means to rectify the situations as quickly and beneficially to all as is possible.

It was never the intent of our people to be able to randomly and without just cause have their neighbors water shut off. Or to have a fisherman walking down the stream decide that too much water was being diverted, or wasted and have an irrigators water turned off.

Before this bill was finalized I spent a great deal of time with people from the Department of Natural Resources learning about the rules and regulations they now utilize in reviewing and investigating complaints, the problems they have with the present system, and the benefits also, and our association was satisfied that this bill, combined with existing means for enforcement would benefit our water users by implementing the enforcements in a shorter time frame.

We are satisfied that SB368 will allow the department, upon complaint, to accomplish an investigation, in compliance with the rules and methods in existence now, and upon determining that there could be a violation of water use, contact the person in question, and make reasonable attempts to obtain voluntary compliance. Should such efforts be unsuccessful, request the district court to issue a temporary, preliminary or permanent injunction to prevent the continuation of the violation.

It was not our intent to tie the departments hands by mandating perimeters for discussions as to the voluntary compliance. If it is a broken headgate, a measuring device operating incorrectly, a plugged culvert, they ought to be able to give the respondent a reasonable time to get his problem straightened out. If the investigation has determined with reasonable cause, that the respondent is diverting more water than he has a right to divert, or if he has no right to the water he is diverting, or even if he is wasting water for any reason, the effort must still be made to work it out and allow compliance.

Given the time frame for investigation of the complaint, the 3 working days for discussion, we are already looking at close to a week. If the 3 working days envelop a week end, and the respondent has indeed been using water not rightfully his, we're more than crowding the loss of a crop, or in the very least a very stressed crop for the irrigator who is not

EXHIBIT I
DATE 3-19-91
HB SR 368

getting his rightful share of the water.

We have tried to be fair with all parties, discussing this with several legislators, with irrigators and other interested water users. We feel we have leaned over backward to be fairer than is necessary to make sure that irrigation will not be stopped unjustly.

However it is important for you to realize that the people who are requesting this bill are irrigators. They know what its like to see a neighbor actually take water that is not his, shorting another, and not being able to do anything about it under our present system, until long after the crop has been harmed.

They have , in instances, witnessed farmers, without a water right, or a very minor right, irrigate all season, season after season, because it takes to long to get anything accomplished legally, and once the season is over, so is the problem.

Our intent is to speed up the process and afford the rightful owners, or those who do conserve water, who do take care of their diversions and measuring devices, the means to use the water as it should be used.

We discussed quite extensively the need for the $1,000.00 per day fine. Should you think that excessive, remember that if a person is using another irrigators water, by what every manner, he can afford to pay a lessor fine, say $250.00 a day, for several days, continue to irrigate until he is over the field, pay a lessor fine and have a crop of greater worth. Consider the cost to the rightful owner of the water . Even four additional days without the necessary water can cost him many thousands of dollars.

We think that if even one or two $1,000.00 fines are assessed, there won't be many mis-users unwilling to discuss the situation and to do something to rectify the complaint.

It is our hope that having this law in place will indeed discourage intentional misuse of water, by whatever means.

We urge you go pass this legislation.

Thank you.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Agriculture COMMITTEE BILL NO. SB368

DATE 3-19-91 SPONSOR(S) Sen. Jergeson

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Gene Mesteyer	DNRC	✓	
Susan Howard	MT Audubon	X	
Kay Norenberg	WIFE	✓	
CAROL MOSHER	MT. CATTLEWOMEN	✓	
Stan Bradshaw	MT F.U.	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

7.50
3-19-9
JDA

HOUSE STANDING COMMITTEE REPORT

March 19, 1991
Page 1 of 1

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that Senate Bill 368 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Linda Nelson, Chairman

Carried by: Rep. Schye

And, that such amendments read:

1. Page 3, line 16.
Following: "BY"
Insert: "the department or"